

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Gilbert F. Mobley,)	C/A No.: 8:09-953-JFA-BHH
)	
Petitioner,)	
vs.)	O R D E R
)	
Levern Cohen, Warden, Ridgeland Correctional)	
Institution,)	
)	
Respondent.)	
_____)	

The *pro se* petitioner, Gilbert F. Mobley, initiated this action pursuant to 28 U.S.C. § 2254 raising various claims that his sentence calculation is incorrect and therefore he is being illegally incarcerated.

The respondent filed a motion for summary judgment. An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Petitioner responded to the motion.

The respondent filed a supplemental motion for summary judgment on the ground that the habeas petition was mooted by petitioner's release. A second Roseboro order was mailed to the petitioner on December 8, 2009. However, the envelope containing the order was returned to the Clerk of Court on December 16, 2009 marked "released." There is no record of a change of address notice from the petitioner.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein she suggests that this action should be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982).

The petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket and mailed to the petition on December 17, 2009. However, the copy of the Report was returned to the Clerk of Court on December 28, 2009, marked “released.”

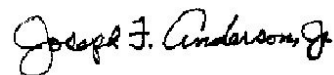
It appears that the petitioner no longer wishes to pursue this action and he has failed to comply with this court’s orders to notify the Clerk of his change of address.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge’s recommendation to be proper and the Report is incorporated herein by reference.

Accordingly, this action is dismissed pursuant to Fed. R. Civ. P. Rule 41(b).

IT IS SO ORDERED.

January 6, 2010
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).